

REMARKS/ARGUMENTS

Claims 48-65 stand in the present application, claims 48 and 57 having been amended. Reconsideration and favorable action is respectfully requested in view of the above amendments and the following remarks.

Rejection under 35 U.S.C. § 102 and 103:

Claims 48-53, 57 and 59-62 were rejected under 35 U.S.C. § 102(e) as being allegedly being anticipated by Rollins, and claims 54-56 and 63-65 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rollins in view of Kitze. Applicants respectfully traverses these rejections.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574 (Fed. Cir. 1986). Rollins fails to disclose every claim element of the claimed invention. For example, Rollins fails to disclose “wherein the billing process records connections established on the network, and also records which of those connections make use of the specified application so that the billing process charges those connections which make use of the specified application a first charge rate and charges those connections which do no make use of the specified application a second charge rate that is different from the first charge rate,” as required by independent claim 48 and its dependents. Rollins also fails to disclose “wherein such connections are charged by the billing engine at different rates according to whether those connections make use of that application so that which of the different rates charged by the billing engine depends on whether or not that connection makes use of that application, wherein connections are made available at a first low-bandwidth

and at least one higher bandwidth, and the billing process is only applied to connections established at the higher bandwidths,” as required by independent claim 57 and its dependents.

The Office Action (page 9) alleges the feature upon which Applicant relies (“*charging different rates according to the application used by the connection*”) is not present in the claims. However, independent claim 57 explicitly recited that connections “are charged by the billing engine at different rates according to whether those connections make use of that application.” To make ever more certain that this limitation is being claimed, independent claim 57 now recites “wherein such connections are charged by the billing engine at different rates according to whether those connections make use of that application so that which of the different rates charged by the billing engine depends on whether or not that connection makes use of that application (emphasis added).” Also, independent claim 48 now recites “so that the billing process charges those connections which make use of the specified application a first charge rate and charges those connections which do not make use of the specified application a second charge rate that is different from the first charge rate.”

Independent claims 48 and 57 thus charge different rates according to the application used by the connection. For example, independent claim 48 explicitly requires charging a first rate for a connection which makes use of the application, but charging a second (different) rate for a connection which does not make use of the application.

Rollins fails to disclose the above noted limitations of claim 48 or 57. Rollins charges differential rates for different bandwidths, but takes no account of the application being used. As the Office Action suggests, some applications may require a temporary raising of the bandwidth provided, and this may be charged accordingly. However, Rollins' billing is dependant only on the required bandwidth, and charges the same for that bandwidth whatever the application that

required it. In short, the billing rate of the invention of claims 48 and 57 is application-dependant, whereas Rollins' billing rate is bandwidth-dependant.

Rollins' billing process charges only according to the bandwidth required, and takes no account of (or record of) the application used for downloading. The requirement for extra bandwidth is noted, the temporary increase in bandwidth is provided, and the user is billed accordingly. Rollins takes no notice of what the extra bandwidth is to be used for, and charges only according to the required bandwidth, and not its purpose.

Moreover, claim 57 further requires that the billing process is only applied if a bandwidth connection higher than the first (lowest) bandwidth is used and, when the billing process is so applied, charges differential rates according to the application used for download. Thus, the billing process, which charges calls at different rates according to what application is in use, as already required by claim 57, is only applied to the higher bandwidths. Consequently, claim 57 requires that this billing process is not applied for the lowest bandwidth available: instead another billing process may be applied: or indeed no billing at all.

With respect to the rejection under 35 U.S.C. § 103, it should also be clear that Kitze does not solve the deficiencies noted above with respect to Rollins since Kitze has merely been cited by the Examiner for disclosing that the application server is a peer-to-peer file transfer controller.

Accordingly, Applicant respectfully requests that the above noted rejections under 35 U.S.C. §102 and 103 be withdrawn.

Conclusion:

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an

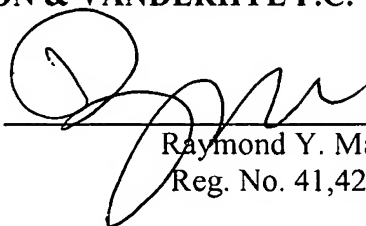
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interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:

A handwritten signature in black ink, appearing to be 'R. Mah', written over a horizontal line.

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